



CITY OF DANBURY
155 DEER HILL AVENUE
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ZONING COMMISSION
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MINUTES
OCTOBER 14, 2008

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The meeting was called to order by Chairman Ted Farah at 7:35PM.

Present were Anthony DiCaprio, Theodore Haddad Jr., Richard P. Jowdy, David Manacek Robert Melillo, Larry Stramiello, Andrew Wetmore, Ted Farah and Alternates Victoria Hickey and Jacqueline Perez-Ares. Also present was Planning Director Dennis Elpern.

Absent were Patrick Johnston and Alternate Thomas Spegnolo.

Chairman Farah asked Ms. Hickey to take Mr. Johnston's place for the items on tonight's agenda.

Mr. Melillo led the Commission in the Pledge of Allegiance.

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Mr. Melillo made a motion to accept the August 26, 2008 & September 9, 2008 minutes. Mr. Wetmore seconded the motion and it was passed unanimously.

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**PUBLIC HEARING:**

7:30 PM - Petition of Attorney Neil Marcus as Agent to Amend Sec. 5.A.2.a. of the Zoning Regulations. (Add "Granite, Marble & Tile Sales establishment including shaping of stones and similar processes" as a permitted use in the CG-20 Zone).

Mr. Wetmore read the legal notice, Mr. Melillo read the Planning Dept. Staff Report & Chairman Farah read the Planning Commission recommendation which was negative. He also noted that the HVCEO response was that this was "of local concern, but without intermunicipal impact". Chairman Farah said because of the negative recommendation from the Planning Commission, approval of this will require a 6-3 vote.

Attorney Neil Marcus spoke in favor of this petition. He said that since it has become fashionable to use these high end materials, there are several of these businesses in the area. Most of the surrounding towns allow this use in the commercial zone, but it is not specifically permitted anywhere in Danbury. Although this is not a site specific application, this particular business wants to take over the former Dent Electric site on Newtown Rd. When they went in to see the Zoning Officer, he said the use was not allowed. Attorney

Marcus then said that with the changes suggested by staff, this is a good use for this zone. All of the suggested safeguards address the concerns expressed in the Planning Commission recommendation. He said this will be a high-end showroom and will upgrade the property. He said it is in harmony with the other 48 uses permitted in the CG-20 zone. Mr. DiCaprio asked since there seem to be other similar businesses existing already, how did they get in. Attorney Marcus said he does not know when they got in but if they had to get a permit today, they would not be able to since the Regulations do not allow this in any zone. Mr. Haddad asked how they would control someone going into a large space and subletting to another tenant and also how they will handle display of materials in the front yard. Attorney Marcus said the revised language (as proposed in the staff report) addresses both of these concerns. Mr. DiCaprio asked if the outside storage of these types of slabs is illegal. Mr. Elpern said the language in Sec. 3.E.4. is a relatively recent amendment and some of these sites predate it. Chairman Farah asked how many other similar operations there are in town. Attorney Marcus said he definitely knows of three or four. Ms. Perez-Ares asked if this will provide new jobs. Attorney Marcus said yes because first the construction company would rehab the building and then the company will probably provide jobs for 20-30 people. Chairman Farah asked if there was anyone else to speak in favor of this petition and one person came forward.

Attorney Martin Rader, said he represents Dent Electric. He added that Mr. Elpern's staff report really says it all. The use is compatible with other uses in the zone and he asked that they adopt the amendment.

Chairman Farah asked if there was anyone to speak in opposition to this petition and there was no one.

Mr. Melillo made a motion to close the public hearing. Mr. DiCaprio seconded the motion and it was passed unanimously. Mr. Melillo then made a motion to move this to item two under Old Business. Mr. DiCaprio seconded the motion and it was passed unanimously.

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7:45 PM - Petition of B & L Holdings LLC, 2 Glen Hill Rd, 33, 35, 37 & 39 Tamarack Ave. a/k/a Rd. (#I10045, #I10044, #I10046, #I10047 & #I10048) for Change of Zone from RA-20 & RMF-6 to CG-20.

Mr. Wetmore read the legal notice. Mr. Melillo read the Planning Dept. Staff Report dated September 30, 2008. Chairman Farah read the Planning Commission recommendation which was negative and noted the HVCEO response was that this was "of local concern, but without intermunicipal impact". He added that the negative recommendation means that a 6-3 majority would be required for approval of this petition.

Attorney Neil Marcus spoke in favor of this petition. He said this is more complicated than it appears. He said the Planning Commission seems to think that this is a residential area, but this is a mixed neighborhood. He described the various uses in the vicinity and said you need to look at the whole area to get a feel for this neighborhood. He said these two old houses on half acre lots are located next to a condo and it is only after the condos that the single family neighborhood takes over. This road leads to the town park and contains mixed uses including many multi family developments. He then said looking at the existing rather erratic zone line; this almost seems like spot zoning. Tamarack Ave. has become much more of a

commercial area due to the overflow of medical offices. Traffic is not an issue because two-thirds of the subject area is already in this traffic intense use. The change will really only be to the two single family homes, which are located on small parcels and one of them is already owned by the Hand Doctors. Traffic does not really seem to be an issue on this road despite it leading to Hatters Park and Lake Candlewood. He mentioned that an expansion was just approved for the CITGO and traffic was not an issue in that case. He said the letter from Mrs. Hackney authorizing him to act as her agent was supposed to have been sent directly to the Planning Dept. Mr. Elpern said it had not been received as of today. Attorney Marcus then said the real question is whether the zone change is compatible with what is going on in this neighborhood. He suggested that the Commission consider this because they should encourage medical uses to flourish in Danbury. It has been somewhat difficult for medical offices in Danbury because of the parking requirement. He said the existing medical offices will continue to exist on these lots, so the only change is the two single family lots. He said this is their only option as they cannot apply for a variance in this zone. He said he was surprised at the negative recommendation from the Planning Commission and then suggested they should go see this as it really makes a lot of sense.

Mr. Wetmore asked how many residents are living in the three houses on the single family lots. Attorney Marcus said #33 and #39 are single family, but #37 is already vacant. He added that the Doctors' purchased #37 because they do not have enough parking onsite and it is immediately adjacent to their property. Mr. Melillo said he disagreed with Attorney Marcus that the single family does not start until further up East Hayestown Rd. He said he grew up in this neighborhood and asked if #37 still is accessed from Glen Hill Rd. Attorney Marcus introduced Dr. John Lunt who is one of the partners in the Hand Center. Dr Lunt then said it was a shared driveway but they own it now so that is not an issue. Mr. Haddad said 52% of this area is commercial, but this could have a domino effect down East Hayestown Rd. Mr. Manacek asked if there is not enough parking on the Hand Center property. Dr. Lunt said there is enough parking but they would like their employees to be able to park in a separate area. He added that the sole impetus behind this project is to get more parking and they can't do it without changing the zone. They purchased the property with the intent of parking there, they are only looking for about a half dozen more spaces. Mr. Melillo asked if they plan to tear the house down. Dr. Lunt said not at the present time, they are using it for storage of files and supplies right now. Attorney Marcus said it was his idea to include all the parcels and make the zoning line more cohesive.

Chairman Farah asked if there was anyone to speak in opposition to this and two people came forward.

Lisa Plate, Apple Blossom Condos, 41 Tamarack Ave., said the condos are adjacent to and behind these properties. She said her concern is that in the future someone could purchase all of these parcels and puts in a strip mall, which could cause a tremendous increase in traffic. She said their driveway is located right next to #39 Tamarack Ave., but the condo property runs behind all of these parcels. She added that they are not affected by the existing doctors' offices but any other future use could drastically affect them.

Jim Wright, Apple Blossom Condos also, said his concern is the traffic which is already a nightmare. He questioned the potential number of parking spaces that could fit on the doctors' overflow lot. He said Ms. Plate already said everything so he would not repeat it.

Attorney Marcus then spoke in rebuttal to the opposition's comments. He said these properties total about three acres, so there is a limit as to how much traffic could be generated. And once you get over 500 trips per day it would become a special exception use, requiring a public hearing and traffic study. He added that there is the potential for an additional traffic light at the Apple Blossom driveway if it became necessary. He said they do recognize Apple Blossom as a residential property, but above it is a mix of single and multi-family dwellings with a few neighborhood commercial uses also.

Dr. Lunt then explained that his practice has been in business for 35 years and Dr. Mehri has a bunch of young doctors on staff, so this area will stay as medical offices. It is not going to be sold tomorrow and converted to retail. He added that he had contacted the Planning Office at least two years ago and has been working on this since that time. He said once they found out they could purchase the parcel at #37, they did it right away, always with the intent of using it for additional parking.

Attorney Marcus said the worst case scenario is that you take the three acres and try to put a commercial use there. The first thing that the Planning Commission will require is massive amounts of screening because it abuts a residential zone. He said this is in the wrong place to become a major commercial shopping center and it is too small to make it worthwhile. He added that even a pharmacy wouldn't want this site, as it is too far off the beaten path.

Mr. Melillo said it is true that these parcels are rather steep; so any development would have to be located to the rear of the parcel. Attorney Marcus said this is an awful site for retail. In order to develop it, they would have to scoop it out and build a retaining wall, and even then, they would not be able to provide flat area for parking. Mr. Jowdy said they could tear everything down and build a large medical office. Attorney Marcus said they could not provide the onsite parking for a large medical building; it would be extremely difficult to provide the required parking for a general office building. In closing, he said it is unlikely that the use of these parcels will change due to their proximity to hospital and the demand for medical office space.

Mr. Manacek said he would really like to do a site visit. Mr. Melillo made a motion to continue the public hearing. Mr. Wetmore seconded the motion and it was passed unanimously.

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OLD BUSINESS FOR CONSIDERATION AND POSSIBLE ACTION:

Petition of Perch LLC, 116, 118 & 122 Coalpit Hill Rd. (#K17014, #K17013/1 & 2, & #K17012) for Change of Zone from RMF-10 to IL-40. Public hearing closed August 26, 2008 - decision must be made by October 29, 2008.

Chairman Farah said that everyone except Mr. Jowdy was eligible to vote on this matter. He asked Ms. Perez-Ares to take Mr. Jowdy's place for this matter.

Mr. Manacek asked Chairman Farah if he had met with Corporation Counsel. Chairman Farah said he had and was ready to proceed with a vote on this matter. Mr. DiCaprio made a motion to approve this because it is a reasonable solution to an unusual circumstance that will protect the City's interests. Mr. Melillo seconded the motion. Chairman Farah asked for discussion.

Mr. Haddad asked Chairman Farah what the meeting with Corporation Counsel was about. Chairman Farah said he wanted to be sure that the Commission handle the decision on this matter correctly. Mr. Melillo said for the record, he felt with the way the petition was presented to them, they had very little options available to them. There was brief discussion about the possibility of adding some language to the approval, but that idea was dismissed. Mr. DiCaprio said he wanted to revise his reasons for the motion to the following: "this decision was based on the findings in the record". Mr. Melillo reiterated his second to the motion. Chairman Farah called a roll call vote and the motion was passed unanimously with nine AYES (from Mr. DiCaprio, Mr. Haddad, Mr. Manacek, Mr. Melillo, Mr. Stramiello, Mr. Wetmore, Ms. Hickey, Ms. Perez-Ares and Chairman Farah).

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Petition of Attorney Neil Marcus as Agent to Amend Sec. 5.A.2.a. of the Zoning Regulations. (Add "Granite, Marble & Tile Sales establishment including shaping of stones and similar processes" as a permitted use in the CG-20 Zone).

Mr. Melillo made a motion to approve this including the revised language stated in the Planning Dept. staff report because these revisions will adequately address all of the issues that were brought up regarding this use. Mr. DiCaprio seconded the motion and it was passed unanimously with nine AYES (from Mr. DiCaprio, Mr. Haddad, Mr. Jowdy, Mr. Manacek, Mr. Melillo, Mr. Stramiello, Mr. Wetmore, Ms. Hickey and Chairman Farah).

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NEW BUSINESS:

Petition of E.W. Batista Family LP, 155 South St. (#J15048) for Change of Zone from RMF-4 to C-CBD. Public hearing scheduled for November 25, 2008.

Petition of Intertech Assoc., c/o Danbury Orthopedic Assoc. Inc., 226 White St. (#J13133 & #J13134) for Change of Zone from CL-10 to CG-20. Public hearing scheduled for November 25, 2008.

Petition of Agriventures Realty, LLC to Amend Secs. 3.E.4.(3) & 5.B.2.b.(15) of the Zoning Regulations. Public hearing scheduled for November 25, 2008.

Mr. Melillo made a motion to refer these three petitions to the Planning Commission. Mr. Wetmore seconded the motion and it was passed unanimously.

Chairman Farah said there also was one more New Business item that the secretary forgot to put on the agenda :

ZBA Referral: Application #08-53 of Nemco Ltd. Partnership/Norbert E. Mitchell Co., 9 Federal Rd. (#K12161 & #K12158) for use variance to Sec. 5.A.2., to permit expansion of previously approved non-conforming use (petroleum distribution and storage) for biodiesel tank. (IL-40 & CG-20 Zones). Zoning Board of Appeals hearing is scheduled for October 23, 2008.

Chairman Farah said the ZBA Subcommittee (Mr. DiCaprio, Mr. Melillo & Mr. Jowdy) will report on this at the next meeting and then the Commission will make a recommendation.

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There was nothing under Correspondence, Other Matters and For Reference Only. At 9:10 PM, Mr. Melillo made a motion to adjourn. Mr. Wetmore seconded the motion and it was passed unanimously.